1-1700-14682-2

STATE OF MINNESOTA

OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF HUMAN RIGHTS

Aisha Barnard,

Complainant,

v.

Midwest Delivery Service, Inc.,

Respondent.

FINDINGS OF FACT, CONCLUSIONS AND ORDER

The above-entitled matter came on for hearing before Administrative Law Judge (ALJ) George A. Beck on October 1-3, 2002 beginning at 9:30 a.m., and continuing on October 23, 2002 beginning at 11:00 a.m.at the Office of Administrative Hearings, Suite 1700, 100 Washington Square, Minneapolis, Minnesota.

Sonja Dunnwald Peterson, Dunnwald & Peterson, P.A., 1150E Grain Exchange Building, 412 South Fourth Street, Minneapolis, Minnesota, 55415, appeared on behalf of Aisha Barnard (Complainant). Thomas R. Lehmann, Lehmann & Lutter, P.A., 1380 Corporate Center Curve #214, Eagan, MN 55121, appeared on behalf of Midwest Delivery Service, Inc. (Respondent).

The Complainant filed a post-hearing memorandum on November 14, 2002, and the Respondent filed its memorandum on December 4, 2002. The record closed on December 13, 2002 with the filing of the Complainant's reply brief.

NOTICE

Pursuant to Minn. Stat. § 363.071, subds. 2 and 3, this Order is the final decision in this case. Under Minn. Stat. § 363.072, the Commissioner of the Department of Human Rights or any person aggrieved by this decision may seek judicial review pursuant to Minn. Stat. §§ 14.63 to 14.69.

STATEMENT OF ISSUES

1. Whether Midwest Delivery Service, Inc., discriminated against Aisha Barnard on the basis of race in violation of Minnesota Statutes § 363.03, subd. 1(2)(b) and, if so, what damages or other relief, if any, should be awarded pursuant to Minn. Stat. § 363.071, subd. 2.

2. Whether Midwest Delivery Service, Inc., engaged in a reprisal against Aisha Barnard in violation of Minnesota Statutes § 363.03, subd. 7 and, if so, what damages or other relief, if any, should be awarded pursuant to Minn. Stat. § 363.071, subd. 2.

Based upon all the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Aisha Barnard ("Barnard") is an African American woman.[1] She has two children and is a single parent.

2. Barnard was employed by Midwest Delivery Service, Inc. ("Midwest") as a part-time Customer Service Representative ("CSR") from July 1999 to January 5, 2001.[2] Midwest was a commercial delivery business that was established by Dave Weber and his brother in 1982. The CSR's job was to answer the telephone, make computer entries and be responsible for arranging for the pickup and drop off of items to be delivered by Midwest drivers.

3. Barnard generally worked four days a week in the fall of 2000, two days from about 10 a.m. to 4:30 p.m. and two days from about 12:30 p.m. to 6:00 p.m.[3] Starting January 8, 2001, Barnard was scheduled to work 10 a.m. to 6 p.m., every other day of the week. She also attended the Minneapolis Community and Technical College while working at Midwest. Midwest allowed her to construct her work schedule to accommodate her class schedule. She was allowed to study at work if the telephones were not ringing.

4. From September 5, 2000 to January 5, 2001, Barnard worked an average of 21 hours a week.

5. On January 5, 2001, Midwest's Comptroller, Philip Frederickson, informed Barnard at the end of her shift that she was being laid off. When Barnard asked him why she was being laid off, Frederickson told her that Midwest's business had declined and it could not afford to pay her.[4] Dave Weber had directed Mr. Frederickson to lay off Barnard. She asked if she could speak to Pat Weber (Dave's wife and Midwest's President) and Mr. Frederickson arranged for her to do so.

6. Barnard met with Pat Weber, and asked her why she was being laid off, rather than Michelle Decoteau, the other part-time CSR. Weber told Barnard that Decoteau would be working mornings only, when Midwest took a higher volume of calls. About two-thirds of Midwest's deliveries were done before noon.

7. Barnard did not offer to change her schedule to work the morning hours Decoteau worked, and Weber did not ask her if she could.[5]

8. Weber told Barnard that she would recall her to work in April or May if business picked up.[6]

9. Barnard was the most senior part-time CSR at the time of her layoff. Barnard was the only CSR laid off by Midwest in 2001.[7]

10. Michelle Decoteau, the other part-time CSR, is Caucasian. She was hired in October of 2000.

11. Decoteau generally started work around 8 a.m. and worked an average of seven hours a day and four days a week.[8] Decoteau worked considerably more morning hours than Barnard. Decoteau worked an average of 27 hours per week from December 2000[9] through January 5, 2001. [10]

12. In the five weeks prior to Barnard's layoff, Decoteau worked an average of 27 hours per week. In the eight weeks following the layoff (January 8 – March 2),[11] she worked an average of 30 hours a week.

13. On the same day that Barnard was laid off, Pat Weber met with the other part-time and full-time CSRs to advise them that there would be no raises or overtime and that some hours would be cut back.

14. On January 23, 2001, Barnard had her sister call Midwest at 1:30 p.m. and Michelle Decoteau answered the phone. Because Decoteau was working in the afternoon, Barnard concluded that she had been discriminated against.

15. At its peak in the early 1990's, Midwest had approximately 45 employees and made about 1300 runs per day. The business experienced a progressive decline thereafter, that accelerated in 1995-96. By 2002 it had 5 employees and 250 runs per day. Over the years employees were reduced by attrition, layoffs occurred, hours and overtime were reduced and fewer benefits were provided. The Webers sold Midwest to Quicksilver Delivery Service on September 13, 2002.[12]

16. The average number of daily runs at Midwest for the year October 1998 to September 1999 was 560. For October 1999 to September 2000 it was 486 and from October 2000 to September 2001 it was 386.[13] The number of runs for July 7, 1999 was 494. On January 2, 2001 it was 393 and on February 11, 2002 it was 198.[14]

17. Barnard considered her immediate supervisor, Barb Novotny, to be rude to her, but friendly with Caucasian employees. Novotny raised her voice at Barnard on one occasion after Barnard incorrectly typed an address. Novotny is Pat Weber's daughter.

18. Novotny had work disputes with other employees and took anger management seminars prior to Barnard's employment with Midwest.[15] Novotny was a hard task master.[16]

19. On one occasion after Barnard asked her about changing her hours, Novotny told Barnard that "I didn't hire you, my mom did."

20. Novotny did not interview, hire or fire employees, although she sometimes accepted aplications.[17] Pat Weber made the hiring decisions for CSRs during the time in question.

21. Barnard was the only African American employee working in Midwest's office at the time she was laid off. Midwest did employ two African American drivers. Over the years, Midwest employed other African Americans.[18] Several former employees, including African Americans, stated that they had not experienced or observed race discrimination at Midwest.[19]

22. In May of 2001, Midwest hired a Caucasian part-time CSR named Yvonne Simon.[20] Simon had previously worked for Midwest from May, 1998 to July, 1999.[21] Simon generally worked four days a week from May to November, 2001.[22] Simon's working hours May through August 2001 were from 10:30 a.m. to 3:30 p.m.[23]

23. On June 19, 2001, Barnard filed a charge of race discrimination against Midwest with the Minnesota Department of Human Rights.[24] The Charge alleged that Midwest "discriminated against me in the area of employment on the basis of race in violation of Minnesota Statutes, Section 363.03 Subd. 1(2)(b)(c)."[25] As examples, Barnard stated that she was the only racial minority working in Midwest's office; Caucasian employees with less seniority were promoted while she never was; and she was laid off while a less senior Caucasian CSR was retained.[26] Barnard's Charge also alleged that "[a]lthough I had been working afternoons, I could have adjusted my schedule in order to accommodate Respondent's need to staff Customer Service Representatives during the morning hours."[27]

24. Pat Weber read Barnard's charge in full shortly after it was received by Midwest, in late June or early July of 2001.[28]

25. On August 16, 2001, Midwest hired a new CSR named Jennifer Garrison.[29] Garrison was hired as a full-time employee, but because of lack of business, worked part-time hours.[30]

26. On September 6, 2001, Midwest hired another new part-time CSR named Danielle Mason.[31] Mason was African American. Mason generally worked from 9 a.m. until noon, three or five days a week, during October and November of 2001.[32]

27. Barnard was never recalled from layoff. She did not contact Midwest after she was laid off.

CONCLUSIONS

1. The Administrative Law Judge and the Minnesota Department of Human Rights have jurisdiction in this matter pursuant to Minnesota Statutes §§ 14.50 and 363.071.

2. The Department has complied with all relevant substantive and procedural requirements of law and rule including providing proper notice of the hearing in this matter.

3. Under Minn. Stat. § 363.03, subd. 1(2)(b) it is an unfair discriminatory practice for an employer to discharge an employee because of race.

4. The Respondent is an employer within the meaning of Minn. Stat. § 363.01 subd. 17.

5. The Complainant has the burden of proof to establish by a preponderance of the evidence that Midwest Delivery Service discriminated against her on the basis of race in violation of Minn. Stat. § 363.03, subd. 1(2)(b).

6. The Complainant has established a prima facie case of race discrimination by a preponderance of the evidence.

7. The Respondent has asserted legitimate nondiscriminatory reasons for its layoff of the Complainant.

8. The Complainant has not demonstrated that the asserted reasons for her layoff were pretextual.

9. The Complainant has not established by a preponderance of the evidence that Midwest Delivery Service discriminated against her on the basis of race in violation of Minn. Stat. § 363.03, subd. 1(2)(b).

10. Under Minn. Stat. § 363.03, subd. 7 it is an unfair discriminatory practice for an employer to intentionally engage in reprisal against an employee because the employee files a charge of discrimination.

11. The Complainant has the burden of proof to establish by a preponderance of the evidence that Midwest Delivery Service retaliated against her in violation of Minn. Stat. § 363.03, subd. 7(1).

12. The Complainant has established a prima facie case of reprisal discrimination by a preponderance of the evidence.

13. The Respondent has advanced a legitimate nondiscriminatory reason for its failure to recall the Complainant from layoff.

14. The Complainant has demonstrated that the asserted reason was pretextual.

15. The Complainant has not demonstrated that her employer’s failure to recall her from layoff was motivated by reprisal.

16. The Complainant has not established by a preponderance of the evidence that Midwest Delivery Service discriminated against her by reprisal in violation of Minn. Stat. § 363.03, subd. 7.

Based on the foregoing Conclusions, the Administrative Law Judge makes the following:

ORDER

IT IS HEREBY ORDERED THAT: This matter is dismissed with prejudice.

Dated this 10th day of January, 2003.

S/ George A. Beck
GEORGE A. BECK
Administrative Law Judge

Recorded: 12 Tapes. Not transcribed.

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

MEMORANDUM

Aisha Barnard brought a race discrimination charge against Midwest Delivery Service ("Midwest"). The Minnesota Human Rights Act provides that it is an unfair employment practice for an employer to discharge an employee based upon race.[33]

If a Complainant provides direct evidence of discriminatory intent, it is not necessary to use the *McDonnell Douglas* burden shifting analysis.[34] Direct evidence is "evidence of conduct or statements by persons involved in the decisionmaking process that may be viewed as directly reflecting the alleged discriminatory attitude . . . sufficient to permit the fact finder to infer that that attitude was more likely than not a motivating factor in the employer's decision." Barnard has not presented direct evidence that Midwest laid her off because of her race,[35] or that Midwest failed to recall her from layoff in retaliation for the Charge of Discrimination she filed. Accordingly, the Administrative Law Judge will apply the *McDonnell Douglas* burden shifting analysis to both claims in this case.

Discrimination

Under *McDonnell Douglas*, the complainant must first establish a prima facie case of discrimination. In employment discrimination cases, a complainant establishes a prima facie case by demonstrating that: (1) she is a member of a protected class; (2)

she met applicable job qualifications; (3) despite these qualifications, she was discharged; and (4) after she was discharged, the employer sought people with Complainant's qualifications.[36] If the Complainant carries her initial burden of production, the burden shifts to the employer to "articulate some legitimate, nondiscriminatory reason for the employee's termination."[37] The burden then shifts back to the Complainant to show that the reason offered by the employer was pretextual.[38] At all times, the Complainant maintains the ultimate burden of persuading the trier of fact that the adverse employment actions were motivated by race.[39]

Complainant established a prima facie case. Barnard, a part-time employee, is a member of a protected class, she was qualified for her position at Midwest, she was laid off despite these qualifications, and Midwest later hired another Customer Service Representative (CSR) to work hours previously worked by the Complainant. The Respondent raised legitimate, non-discriminatory reasons for laying off Barnard. Specifically, Respondent contends that Midwest laid off Barnard because the company's business had declined and it could not afford to pay her. It is undisputed that Midwest's business was declining at the time of Barnard's layoff. Respondent states that Michelle Decoteau was retained because she worked morning hours when the customer call volume was at its highest. The Complainant did not contest the fact that the volume of calls to CSRs was higher in the morning than in the afternoon, when most of the Complainant's hours were scheduled.

The Complainant did not establish that Respondent's proffered reasons for the layoff are pretextual. There was no demonstration that the decline in business was not real or that it was used as an excuse by the employer. The record indicates that Midwest had to take steps to reduce expenses in early 2001 and that this precipitated the Complainant's layoff. It also shows that most of the customer calls to Midwest came in during the early morning hours. The Complainant did not prove that Decoteau worked other than mainly morning hours or that the employer knew Barnard was willing to work in the early morning.

Assuming *arguendo* that the Complainant had shown that the Respondent's legitimate business reasons were pretextual, she did not carry her ultimate burden of persuasion that Respondent's actions in laying her off and failing to recall her to work were based on race. The Complainant alleges that when she was laid off the only other part-time CSR employed at the time of her layoff, a Caucasian, absorbed her hours. The facts do not support this allegation. Prior to the Complainant's layoff, the Complainant worked 21 hours a week on average. During this same time period, the Caucasian CSR, Decoteau, worked an average of 27 hours a week.[40] Following the Complainant's layoff, Decoteau worked an average of 30 hours per week, an increase of only three hours. So the Complainant was not immediately replaced.

The Complainant also alleges that Respondent's failure to ask her if she could rearrange her schedule to work early morning hours was evidence of discrimination. In the past, the Complainant had informed the Respondent of her class schedule and her work schedule had been arranged around the school schedule. Complainant's Rebuttal Memo indicates that this process had already taken place by the time of her layoff and

Complainant was scheduled to work 10 a.m. to 6 p.m., every other day. The Complainant alleges that she could have rearranged her schedule to work the hours worked by Decoteau. If that was the case, when, at the time of her layoff, the Complainant was informed of the hours when the Respondent needed a CSR, she could have offered to work those hours. That would be an entirely different fact scenario from the one presented. In this case, Midwest told Barnard that she would be laid off, and a less senior employee retained, because of the morning hours worked by the less senior employee. Barnard did not offer to change her schedule. To do so would have been consistent with her previous requests to adjust her hours and would have been an expected response if Barnard had flexibility in scheduling classes. The first that the Respondent knew that the Complainant could have worked those morning hours was when it received her charge of discrimination in late June or early July.

The Complainant also attempted to prove that she was denied a promotion to an assistant dispatcher position and that Midwest was hostile towards African-American applicants. The record indicates, however, that there was no assistant dispatcher position available to be filled. The evidence concerning calls or applications from African-American applicants to Barb Novotny indicated that Novotny did not hire or fire at Midwest nor did it show treatment different from any other applicants at Midwest.

Finally, the Complainant accused the Respondent of race discrimination in its failure to recall her to a CSR position in May of 2001. Instead the Respondent hired Yvonne Simon, a former employee who was Caucasian, to work four days a week during hours that the Complainant had previously worked. The record does not provide any reason to presume that Respondent hired Simon instead of recalling Barnard because of Barnard's race. Both Simon and Barnard were former CSRs and Respondent cannot be presumed to have discriminated on the basis of race simply because it hired one and not the other. Personnel decisions made by employers are not reviewed by the courts for fairness or wisdom, but rather for intentional discrimination.[41] There is no evidence of intentional discrimination in this case.

Retaliation

The Complainant has also alleged that she was subjected to reprisal discrimination by the Respondent because of filing a charge of discrimination. The Minnesota Human Rights Act prohibits intentional reprisal against an employee who has engaged in statutorily protected activity.[42] The three-part analysis set forth in *McDonnell-Douglas* is applicable to reprisal claims under the MHRA.[43] In order to establish a prima facie case of reprisal under the MHRA, the Complainant must show: (1) that she engaged in statutorily protected conduct; (2) that Midwest took adverse employment action; and (3) that a causal connection exists between the employee's conduct and the employer's action.[44] An adverse employment action is one "which materially alters the terms or conditions of the plaintiff's employment."[45] A causal connection may be demonstrated indirectly by evidence of circumstances which infer a retaliatory motive, such as evidence showing that the employer knew of the protected activity and the adverse action followed closely in time.[46] If the Complainant establishes a prima facie case, the burden of production shifts to Respondent to

articulate a legitimate and non-discriminatory reason for its adverse action.[47] The burden then shifts back to the Complainant to show by a preponderance of the evidence that the proffered reasons were not the true reasons for the action, but were instead a pretext for discrimination.[48] At all times, the Complainant maintains the ultimate burden of persuading the trier of fact that the adverse employment actions were motivated by reprisal.[49]

The Complainant established a prima facie case for reprisal discrimination. Barnard engaged in protected conduct by filing a charge of discrimination against Midwest on June 19, 2001; her employer knew that she had filed a charge by late June or early July of 2001; and it can reasonably be concluded that Midwest took adverse employment action by not recalling her to work as a CSR in August or September of 2001, when it hired two new CSRs. The Respondent has asserted a legitimate and non-discriminatory reason for not recalling Barnard to work. Specifically, Respondent contends that it needed CSRs to work early morning hours and the Complainant was not available to work those hours. The Complainant has established that this reason is pretextual because her charge stated that she could have rearranged her schedule to work morning hours. Pat Weber testified that she read the charge when it was received.[50]

While the Complainant established a prima facie case, and has rebutted Respondent's non-discriminatory reason for not recalling her, she did not carry her burden of persuading the Administrative Law Judge that Midwest's failure to recall her to work in August and September of 2001 was motivated by reprisal.[51] The overall record convinces the ALJ that this employer did not intentionally retaliate against Barnard. Although Pat Weber read the charge indicating that Barnard would change her hours, it seems more likely than not that its failure to recall her was not related to the charge. One indication of this is the employer's actions before the charge was filed. The evidence shows that Midwest said it would recall the Complainant in April or May of 2001 if business picked up. Business picked up enough in May so that another CSR, Yvonne Simon, was hired to work about 20 hours a week. Instead of recalling the Complainant, Midwest hired another former CSR to work similar hours to those the Complainant had formerly worked. Rather than recall Barnard from layoff, Midwest chose to hire another former CSR. There is no evidence that this hire was motivated by the Complainant's race, and it could not have been motivated by reprisal as Barnard did not file a charge of discrimination until the next month.

Yvonne Simon's hire demonstrates that Midwest chose not to recall the Complainant both before and after she filed a charge. Additionally, the employer's treatment of the Complainant while she was employed was positive. Pat Weber had difficulty letting her go. At the hearing it was clear that Barnard also felt positively about Ms. Weber's treatment of her during her employment despite the layoff. Several former employees testified that they observed no discrimination at Midwest. This factual situation does not tend to support an intentional reprisal claim. Under these facts, the Complainant has not met her burden of persuasion that Midwest's failure to recall Barnard in August and September was motivated by reprisal discrimination.

[1] Ex. 8.
[2] *Id.*
[3] *See* Ex. 2.
[4] Ex. 8; Testimony ("T.") of Barnard. There is no dispute that Midwest's business had declined in the fall of 2000. *See* Complainant's Rebuttal Memo at 2.
[5] *See* Ex. 1, p. 39; T. of Barnard and Pat Weber.
[6] Testimony of Barnard, Barb Novotny.
[7] T. of Pat Weber.
[8] Ex. 26.
[9] The first full month of time cards available for Decoteau is December 2000. *See* original time cards of Michelle Decoteau (submitted by Midwest to the ALJ on November 8, 2002). Because of incomplete information and improperly dated time cards, it is hard to establish Decoteau's hours during November, 2000. For instance, Decoteau's time card for the week ending 12/30/00 records her hours for Monday, Tuesday, Thursday and Friday of that week as November 25 – 28, rather than as December dates. As Christmas in 2000 was on Monday, it is very unlikely that Decoteau worked Monday that week. One is left to assume that the dates given are therefore incorrect as to day and to month, and represent hours worked on December 26 – 29. This is one of the many examples of mistakes on the time cards. There was testimony that the time clock was frequently incorrect as to the date.

Thus, although the Administrative Law Judge has analyzed the Complainant's allegations regarding the retention of Decoteau in place of Barnard because of race and found those allegations to be unfounded (*see* attached memorandum), the ALJ has not relied on the specific dates on the time cards to make this determination. More significant in comparing the two CSRs' schedules, and in testing the Respondent's purported business reasons for the Complainant's layoff, was their start times, and to some extent their total hours worked, rather than the exact days on which those hours were worked. The Complainant has not raised any issue as to the accuracy of the start and end times on the time cards.
[10] The Complainant alleges that from September 2000 to January 4, 2001 Barnard averaged 20 hours of work per week. *See* Complainant's Rebuttal Memo. The Complainant states that "Decoteau also routinely worked four days a week from October 2000 to January 4, 2001, and averaged 23 hours per week." *Id.* As Decoteau's hours for October are not included, and those for November are only partially included, in the Time Card Summary attached to the Affidavit of Melissa D. Chambers, it is not clear how the Complainant reached the 23 hour figure for Decoteau. The Complainant's Time Card Summary shows that Decoteau worked an average of 7.4 hours a day, 3-4 days a week, during the month of December. The Summary also shows that Barnard worked 4 days a week at an average of 5.4 hours a day that month and 5.2 hours a day over the entire period (September 5, 2000 – December 28, 2001).
[11] Dates were chosen so as to compare full, rather than partial, work weeks.
[12] T. of David Weber.
[13] Ex. I.
[14] Ex. A, A-1.
[15] T. of Novotny.
[16] T. of Pat Weber. The record also indicates that Ms. Novotny had a relationship with an African-American man and that they lived with Dave and Pat Weber for a period of time.
[17] T. of Novotny, Pat Weber, David Weber, Sonja Reeves, former CSR, and Valerie Segelstrom, Office Assistant, who did some personnel work.
[18] T. of Sonja Reeves, Joy Duroche, Cecilia Lee, Jennifer Garrison, Darren King and Todd Conrad.
[19] T. of Cecilia Lee, Darren King, Todd Conrad and Annette Egge.
[20] Ex. 10.
[21] Ex. 16.
[22] Ex. 4.
[23] Ex. 4.
[24] Ex. 8.
[25] Ex. 8.

[26] *See* Ex. 8.
[27] *Id.*
[28] T. of Pat Weber.
[29] Ex. 15, at 13. Ms. Garrison's time cards were not produced and her work schedule is not part of the record.
[30] T. of Garrison.
[31] Ex. 15 at 13.
[32] *See* Ex. 5.
[33] Minn. Stat. § 363.03, subd. 1 (2002).
[34] *See McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802-04, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973); *Feges v. Perkins Restaurants, Inc.*, 483 N.W.2d 701, 710 n.4 (Minn. 1992).
[35] Although evidence was presented concerning the conduct of the Respondent's daughter toward the Complainant, it appeared that the rude behavior of which the Complainant complained was also directed at other employees, many of whom were Caucasian. Barnard did not show that Novotny's conduct toward her was related to her race and thus the conduct does not support an inference of discriminatory intent. The comment made by Novotny to Barnard (Findings of Fact No. 19) does not suggest discrimination. In addition, several former employees who testified, some of whom were African American, stated that Midwest did not discriminate against African Americans. Even assuming that Barnard had presented evidence sufficient to support an inference of discrimination by Novotny, Midwest established that Novotny did not make hiring or layoff decisions for Respondent.
[36] *Danz v. Jones*, 263 N.W.2d 395, 399 (Minn. 1978); *Kepler v. Kordel, Inc.*, 542 N.W.2d 645, 647-48 (Minn. App. 1996), *rev. denied* (Minn. March 19, 1996).
[37] *Hutson v. McDonnell Douglas Corp.*, 63 F.3d 771, 776-77 (8th Cir. 1995).
[38] *Id.* at 777, *Anderson v. Hunter, Keith, Marshall & Co.*, 417 N.W. 2d 619, 623 (Minn. 1988).
[39] *Rothmeier v. Inv. Advisors, Inc.*, 85 F.3d 1328, 1332 (8th Cir. 1996).
[40] As noted *infra* in the note accompanying Finding of Fact 7, the Complainant's figures show the two CSRs as working almost the same number of hours per week. Even assuming *arguendo* that the Complainant's figures of Barnard averaging 20 hours per week in the months prior to her layoff, and Decoteau averaging 23 hours per week during a similar time period, were correct, the fact that the two CSRs worked a similar number of hours per week is less significant than the time of day they worked. Midwest had a higher volume of calls in the morning than in the afternoon. Decoteau generally started working at 8 a.m., while Barnard started between 10 a.m. and 2:30 p.m. Midwest wanted to staff the morning hours to meet the larger demand during that time. Decoteau's work schedule better corresponded with customer demand than Barnard's.
[41] *See Ross v. Kansas City Power & Light Co.*, 293 F.3d 1041, 1047 (8th Cir. 2002); *Lee v. Minn. Dep't of Commerce*, 157 F.3d 1130, 1135 (8th Cir. 1998).
[42] Minn. Stat. § 363.03, subd. 7.
[43] *Hubbard v. United Press Int'l, Inc.*, 330 N.W.2d 428, 444 (Minn. 1983).
[44] *Id.* at 445; *See also Bergstrom-Ek v. Best Oil Company*, 153 F.3d 851, 859 (8th Cir. 1998).
[45] *Ludwig v. Northwest Airlines, Inc.*, 98 F.Supp.2d 1057, 1069 (D.Minn. 2000).
[46] *Best Oil*, 153 F.3d at 859.
[47] *McDonnell Douglas*, 411 U.S. at 802, 93 S.Ct. at 1824.
[48] *Id.* at 804, 93 S.Ct. at 1825.
[49] *Rothmeier v. Inv. Advisors, Inc.*, 85 F.3d 1328, 1332 (8th Cir. 1996).
[50] Pretext was established in the sense that the reason offered conflicted with the information earlier available to the employer. This likely equates with the explanation being "unworthy of credence" within the meaning of *State v. Scientific Computers* 393 N.W. 2d 200, 203-4 (Minn. Ct. App. 1986).
[51] In *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133 (2000) the U.S. Supreme Court made it clear that the rejection of an employer's articulated reason for its action does not compel a finding of discrimination. The Court observed that the plaintiff retains the overall burden to show intentional discrimination and suggested that a fact finder should consider all of the evidence in determining whether the plaintiff has sustained its burden of proof.